

TRIP REPORT

DATE: October 26, 2004

PREPARED BY: S. C. Burrell

LOCATION: State Office

TRAVELED TO: Antelope Creek

DISTRIBUTION: Tim Luke, Glen Saxton, Gary Spackman (IDWR)
Harvey Walker (Arco)

DATE(S) OF TRAVEL: October 6, 2004

PERSONS CONTACTED: Bob Duke, Randy McAfee, Preston Bell

PURPOSE OF TRIP: Investigate list of issues related to issuing an order requiring measuring devices and headgates on the Antelope Creek drainage in Water District 34.

Randy McAfee contacted Tim Luke regarding the lack of measuring devices and controlling works at diversions on Antelope Creek. I drove to Antelope Creek on Wednesday, October 6 to meet the water master and ascertain the situation. McAfee and Preston Bell took us to the various areas that McAfee had described to Tim on the phone. McAfee also faxed a list in upstream to downstream order of location of the problems. The faxed list verbatim from McAfee, with the exception of the added item numbers, is below:

Item # Description

1. Beaver dams on forest.
2. Beaver dams and no lockable head gates or measuring devices on several properties.
3. Jack Harrop filling main channel with rocks contrary to ruling by Bob Fleener
4. Reeses taking water from Antelope to Dry fork contrary to ruling by Glen Saxton
5. Watermaster allowing Antelope water to go to Cherry Creek when NO water right exists.
6. Jack Hortons fish ponds being filled
7. Mountain Springs using a backhoe to block Dry Fork to irrigate a pasture
8. Beaver Dam in the narrows (Keller property) in the rocks
9. Alvin Crawford damming the whole creek to put water in his ditch
10. The removal of the cement structure in the back flood channel below Crawfords
11. Dale Huffacker installing an electric pump at the Hanrahan headgate (no water right)
12. Bob Shawver blocking off the main channel so all water in that channel goes on his property.
13. The Watermaster allowing water to continue to be taken when no rights is on because didn't think it would hurt.

The group, with McAfee and Bell in one vehicle and Bob and I in another, proceeded up the valley after meeting at 11:00 a.m. by the highway 93 turnoff.

McAfee and Bell stopped at several beaver dam sites up the creek. These locations are shown on the map below (Figure 1). All of the dams are located on private property. It is apparent that a significant beaver population lives in the Antelope Valley, on the order of several dozen. It was discussed among the four of us that the water district should attempt to hire a trapper to remove the beavers first. Without eliminating the beaver population first, it is fruitless to remove the dams, as the beavers quickly return. An effort could then be undertaken to remove the dams that would entail obtaining access to them through cooperative property owners. IDWR would be responsible for measuring stream flows to determine what influence the

dams have on natural flow amounts available to water users. Cooperation with the Army Corps of Engineers (ACOE) would also be necessary.

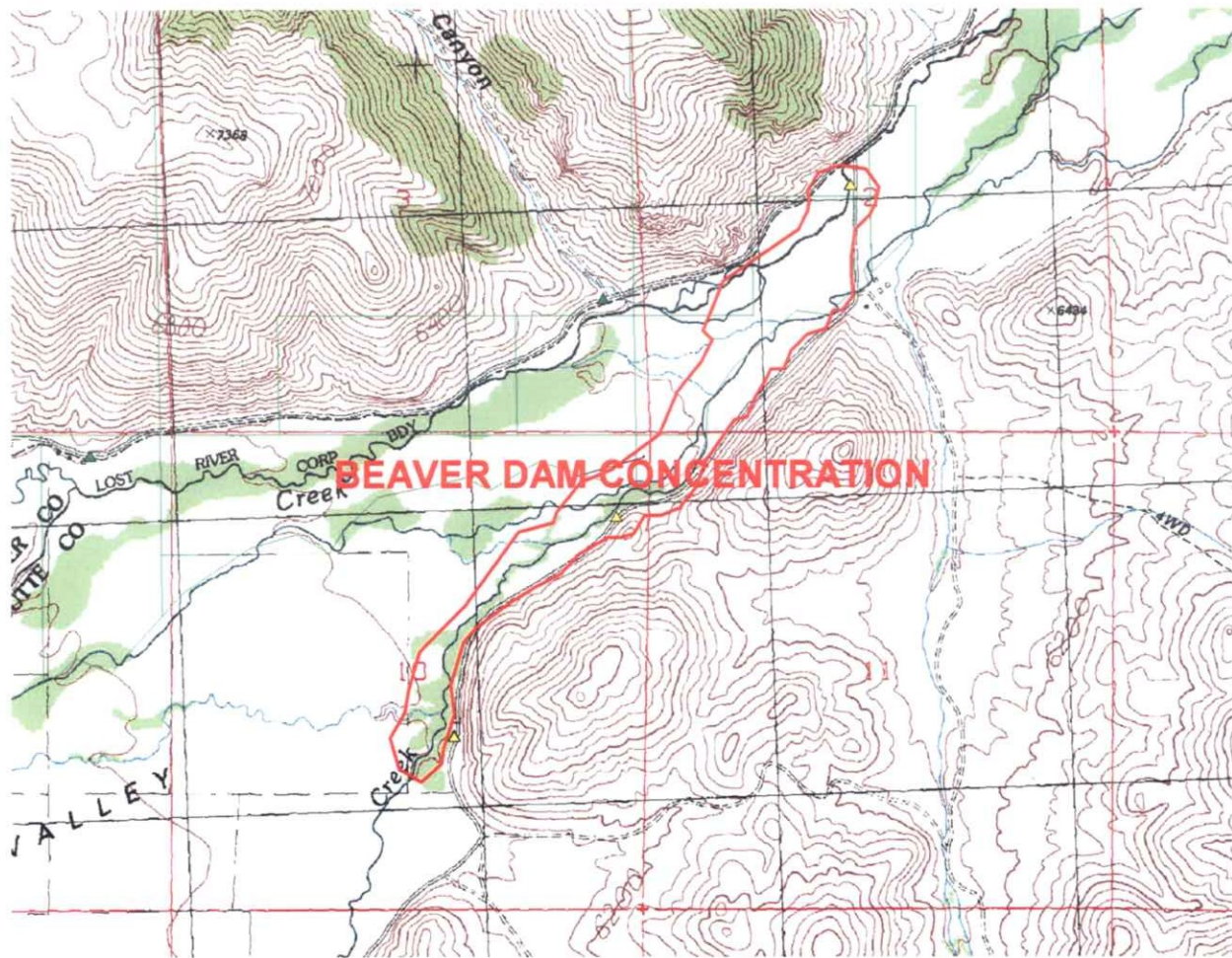


Figure 1 - Beaver dam area on lower Antelope Creek

Regarding item #7, Mountain Springs Ranch maintains a diversion on Dry Fork Creek, a tributary to Antelope Creek. This photo below (Figure 2) shows the diversion that is described as blocking Dry Fork to irrigate pasture. This diversion is lacking a suitable headgate and measuring device, but is not blocking off the creek completely. Water that has passed through the slide gate turnout culvert is visible downstream from the earthen diversion dam. A legal POD for Water right no. 34-439A is listed at this location for 7.15 cfs. The priority data is 08/03/1885. Smith is listed as the current owner, however Mountain Springs Ranch recently purchased the property.

The diversion in question in Item # 4 was visited next. The Reese brothers have a legal point of diversion on Antelope Creek at this location. Reese's had been instructed by phone by Bob Duke to divert 2 cfs of water a few days prior to this. Their most senior water right for 2 cfs at this POD has a priority of May, 8 1884, and is junior to McAfee. The diversion consists of a metal culvert with a hinged wooden door for shutting down flow. A wooden diversion structure is located just downstream. The diversion structure lacks a measuring device, and barely qualifies as a lockable headgate. Reese's said the previous watermaster had okayed the culvert as a measuring device. It is apparent that no attempt has been made to calibrate it, or add a staff gage.



Figure 2 - Mountain Springs Ranch diversion on Dry Fork Creek

McAffee had observed this diversion being used when he had not been getting any water for his 5-30-1883 right, which is for irrigation and stockwater. His right is the furthest downstream. McAfee had needed water for his stock, and had been using groundwater instead of the Antelope Creek water.

Bob Duke said in the last few days he had instructed the upper water users to go ahead and take water if they needed. This was done in order to build up the soil moisture so less water would be used in the beginning of next irrigation season. Based on statements by the watermaster and Reese's, this is a common historical practice. Reese's said that McAfee had lived in the upper Antelope Valley and was aware of this practice. Using water in the fall and less in the spring season allows more water to remain in the creek in the spring, benefiting downstream users.

Since Bob had instructed the Reese's to take the water, they were unhappy that McAfee was accusing them of stealing water, when they were just following the water master's instructions. I stated to McAfee that if he thought Bob was out of line in performing his duties, i.e. delivering water out of priority, then McAfee could request in writing to the Director that the water master be removed for not performing his duties. I was making reference to IC 42-605(9).

It was also discussed that a deputy was budgeted for the Antelope Creek reach, but a suitable deputy could not be hired. Bob had assumed duties for riding the creek this season. Reese's agreed that a deputy water master would be beneficial in managing the creek.

Figure 3 shows the confluence of Cherry Creek and Antelope Creek, water surfaces in the foreground and background in the picture, respectively. The issue here (item #5) is that water is being diverted on Cherry Creek, thus preventing that water from reaching McAfee downstream, through Antelope. We did not drive up Cherry Creek to see the diversions. McAfee said there should be more water than just the rising water seen in Cherry Creek (in Figure 3) on the day of my visit if the users on Cherry Creek were not diverting.

After returning to Boise, a search of IDWR records show the most senior priority on Cherry Creek is Sept. 3, 1882. McAfee has a priority of 5-30-1883. Thus, some water on Cherry Creek has senior priority to McAfee. More specific information is needed to determine if anyone on Cherry Creek is diverting out of priority and to validate the allegation of item #5.



Figure 3 - Cherry Creek, Antelope Creek confluence

Next, we visited Dale Huffacker's installation of a pump on the Hanrahan Ditch headgate without a water right (Item #11). Research done in Boise after the trip verifies that this POD is illegal for Huffacker's Antelope Creek rights 34-2473, 34-2474A. The legal POD is in 05N 25E sec. 1 SWSESW, and not in Sec. 24 where McAfee showed it is currently located.

Figure 4 shows the location where a concrete sill used to exist and was used for regulating flow into the back flood channel (item #10). According to McAfee, the concrete sill was removed last year and replaced with this earthen dam. McAfee said flash boards would be stacked on the sill to regulate flow, but this earthen dam ruined that capability.

Figure 5 shows where McAfee says Bob Shawver has blocked off the main channel to force water onto his property. Shawver has a 09-30-1879 water right on the Hanrahan ditch. A flume used to route the water from the Hanrahan over Antelope Creek to Shawver's POU, but the flume is washed out. McAfee says this dam shown in Figure 5 is now the POD for Shawver. I told the group that the watermaster should remove this dam prior to next years irrigation season because it would be an illegal POD for Shawver, unless a transfer is completed for moving the POD.



Figure 4 – Location of former concrete structure on the back flood channel.



Figure 5 - Shawver dam across main creek.

Regarding item #2, lack of measuring devices, a letter was sent to Antelope Creek water users on April 18, 2002. This letter reminded water users that an adopted water district resolution required headgates and measuring devices on Antelope Creek diversions. The letter from IDWR set a deadline of May 20, 2002 for installation of adequate measuring devices and locking headgates on Antelope Creek. Failure to meet this deadline required the watermaster to refuse deliver to those not in compliance with the adopted water district resolution.

This April 18, 2002 letter from IDWR to Antelope Creek water users also reiterated that a deputy was budgeted for to manage the Antelope Creek water. Based on my visit, it would be very helpful if the water district would hire a deputy, per it's adopted resolutions. Due to the remoteness of Antelope Creek, it seems impractical to expect the watermaster to regulate this drainage effectively given the large area encompassed by the district.

Also, I don't believe an Order issued by IDWR to require measuring devices and headgates on Antelope Creek would be complied with, unless adequate personnel resources are available from the district to enforce such an order.

The remaining items not covered in this report on the list above of McAfee's concerns were either general in nature, or not specifically shown to me during this visit. These items are #'s 3, 6, 9, 13.

Copies of correspondence from Mr. McAfee regarding this trip are attached for reference.

RECEIVED
OCT 20 2004
DEPARTMENT OF
WATER RESOURCES

October 7, 2004

Director Dreher

October 6, 2004, Myself along with Preston Bell, Steve Burrell IDWR and Watermaster Dist. 34 Bob Duke toured the Antelope Valley to address the attached list of concerns.

I have had a difficult time receiving my water this fall and late summer. I have spoke to Mr. Duke on several occasions in reference to individuals toward the head of Antelope taking water when their degree was not on or no water right even existed.

It was clear that Mr. Duke had informed waterusers prior to our visit as numerous users met us at different locations and angrily expressed their views on our being there.

Bill and Josh Reese were extremely furious at their headgate when the fact that they were taking water when they had no water right on. Bill stated they weren't stealing water the Watermaster CALLED THEM and told them they could take it. When Bob was confronted he confirmed that yes he had along with calling Kings and Waddoups. He made a judgment call that it was better to have 4 or 5 users up Antelope having the water than just me. There is also water going to Mountain Springs and Keeles.

12 days ago the water was in lower Antelope and the Hanrahan ditch providing water to Crawford, Shawver, Myself, Bradford and Crump all with 1879 or 1880 rights which are senior to any of those individual rights up Antelope that Bob gave our water to.

Bob Duke blatantly overstepped his authority. He has intentionally deprived individuals of their legal rights in order to give water to his preferred friends.

I respectfully request Bob Duke be removed from office immediately.

As the attached list will show, Antelope is a free for all. The rest of Water District 34 doesn't seem to be fairing any better under Mr. Dukes guidance. Would you consider the Idaho Department of Water Resources coming in and taking over enforcement of all water rights for the 2005 season to get everyone back on track?

Sincerely


Randy McAfee

Attachment

Oct. 5, 2004

Mr. Burrell and Mr. Luke

Here are some of the issues in Antelope starting at the top

Beaver dams on forest

Beaver dams and no lockable head gates or measuring devises on several properties.

Jack Harrop filling main channel with rocks contrary to ruling by Bob Fleener

Reeses taking water from Antelope to Dry fork contrary to ruling by Glen Saxton

Watermaster allowing Antelope water to go to Cherry Creek when NO water right exists

Jack Hortons fish ponds being filled

Mountain Springs using a backhoe to block Dry Fork to irrigate a pasture

Beaver Dam in the narrows {Keller property} in the rocks

Alvin Crawford damming the whole creek to put water in his ditch

The removal of the cement structure in the back flood channel below Crawfords

Dale Huffaker installing an electric pump at the Hanrahan headgate {no water right}

Bob Shawver blocking off the main channel so all water in that channel goes on his property.

The Watermaster allowing water to continue to be taken when no right is on because he didn't think it would hurt.

Our sincerest thank you for responding



Trilby McAfee

Hanrahan Ditch Secretary

RECEIVED
OCT 20 2004
DEPARTMENT OF
WATER RESOURCES

October 18, 2004

Director Dreher

Updating you on my previous letters, Reeses shut the water they were taking off and it is unknown if any other persons were told to shut off as per my conversation with Bob Duke on Oct. 6, 2004.

The water reached my property October 10th for stockwater.

It is unknown if Mountain Springs or David Keele shut off any water as Mr. Keele stated he would have anyone arrested for trespass if they crossed his property to look in the ditch. This is the same ditch that Mr. Duke allowed Mountain Springs to take water out of when they have no degree out of Antelope for their Cherry Creek property.

Who do I call when the Watermaster is the one violating the law.

A handwritten signature in cursive script that reads "Randy McAfee".

Randy McAfee